

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT : Franks et al.  
SERIAL NO. : 10/524,316  
FILED : February 9, 2005  
FOR : ANALGESIC AGENT FOR NEWBORN OR FETAL  
SUBJECTS  
EXAMINER: E. Arnold  
GROUP ART UNIT : 1616

COMMISSIONER FOR PATENTS  
P.O. BOX 1450  
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**DECLARATION UNDER 37 C.F.R. 1.132**

SIR:

I, Nicholas Franks, declare as follows:

1. I am the Head of Biophysics at Blackett Laboratory at Imperial College, South Kensington, London, United Kingdom, a position that I have held since 1997. I am also a Professor of Biophysics and Anaesthetics at the above-identified institution, a position that I have held since 1998 and Head of Cell and Molecular Biology, a position that I have held since 2008.
2. I received a B.S. degree in physics from Brunel University, London, United Kingdom in 1972. I received a Ph.D. in biophysics from King's College, London, United Kingdom in 1975.
3. I have conducted several research experiments involving rats, including experiments testing the effects of xenon on rats.

4. I am the co-inventor of the above-identified application and have reviewed it as well as the Office Action of October 24, 2008. I have also reviewed the reference, Fukara et al. (Prog. Neuro-Psychopharmacol. & Biol Psychiat., 2004, 24, 1357-1368) ("Fukara").

5. Fukara describes preparing isolated growth cone particles from fetal and neonatal rat forebrains. Fukara mentions homogenizing the forebrains of the rats. I am familiar with this preparation method (Fukara cites to a journal article by Ellis et al., which cites to a journal article by Pfenninger et al, the latter of which I have reviewed).

6. I can attest that based on the preparation methods cited by Fukara, the rats used by Fukara would have been killed prior to homogenization of their brain matter. The brains of the fetal rats would have been removed with no analgesic. In brief, it is standard practice to kill the rats as used and described by Fukara (via various decapitation or cervical dislocation methods that result in instant death and require no analgesia) and then dissecting their brains on ice or at extremely low temperatures such as 4°C. An analgesic would not be used at any point during this procedure.

7. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the patent or any reexamination certificate issued therefor.

Dated: 29<sup>th</sup> January 2009

A handwritten signature in black ink that reads "Nick Franks". The signature is written in a cursive, slightly slanted style.

Nicholas Franks